

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of Temporary Immediate
Suspension of the Family Child Care
License of Amy Harstad

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Linda F. Close on April 3, 2006, commencing at 9:55 a.m., at the Anoka County Government Center, 2100 Third Ave., Anoka MN 55303-2265. The record closed at the end of the hearing day.

Janice M. Allen, Assistant County Attorney, Government Center, 2100 Third Ave., Anoka MN 55303-2265, appeared on behalf of the Department of Human Services (Department) and Anoka County.

Patrick Foley, Esq., 2353 Rice St., Suite # 1800, Roseville, MN 55113 appeared on behalf of Amy Harstad (the Licensee).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 245A.07, subd 2a, the Parties have ten (10) calendar days after receiving the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations to file exceptions with the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, (651) 296-2701, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner. Since the Commissioner must issue his final order within 10 working days from receipt of the Administrative Law Judge's recommended decision, the parties are requested to file any exceptions as soon as possible.

STATEMENT OF THE ISSUE

Is there reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in the care of Amy Harstad so as to require the temporary immediate suspension of her family child care license?

Based on all of the files, records and proceedings, herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee has been licensed as a family child care provider since June 2003. She provides child care in her home located at 2617 107th Ave. NW, Coon Rapids MN 55434.^[1]

2. On March 3, 2006, the Department issued an Order of Temporary Immediate Suspension of the license. The violation alleged is neglect of a child in the Licensee's care.

3. The Licensee timely requested a hearing, and a hearing was held on April 3, 2006.

4. On February 1, 2006, Anoka County Child Protection received a communication about possible abuse or neglect at the Licensee's home. The communication indicated that, on January 31, 2006, a child had received a second degree burn from a kerosene space heater in the Licensee's home.^[2]

5. On February 2, 2006, Megan Carriveau (the Investigator), who has been a child protection investigator for Anoka County for two years, began an investigation of the communication received on February 1st. As part of her investigation, the Investigator reviewed the Licensee's records maintained by the child care licensing unit.^[3]

6. Review of the Licensee's records showed that Jennifer Carlson, a licensing worker (the Licenser), had first discussed the issue of space heaters with the Licensee on January 10, 2005. On that date, the Licenser did a "drop in" visit to the home and saw the Licensee move a kerosene heater using an oven mitt. The space heater was located on a porch off the Licensee's kitchen. The Licensee explained that she used a space heater to warm the room before allowing the children to play there. The heater was removed from the room before the children played there. The Licensee and the Licenser discussed making the room inaccessible while the space heater was in the room, since a child might be able to enter the room while the space heater was there. The Licenser suggested putting a gate at the door separating the porch from the kitchen, and the Licensee agreed to do this.^[4]

7. Review of the Licensee's records further showed that, sometime after the January 10, 2005 visit, another licensing worker, Maria Dierks, made a drop in visit. Ms. Dierks found an electric space heater on the porch. She found the space heater on, but cool to the touch., and no correction order was issued.^[5] The Licensee had purchased that specific electric space heater

because she wanted a space heater that could be in the room with the children and not pose a threat to them. The electric space heater had a control that prevented it from exceeding 90 degrees. Before purchasing the electric space heater, the Licensee read the package carefully to ensure that she was buying a space heater that would comply with day care licensing requirements.^[6]

8. The Investigator's review of the Licensee's records further showed that, on May 18, 2005, the Licenser made another drop in visit. Once again, there was a space heater on the porch. The Licenser believes it was an electric one, though she did not make a note of it. Children were playing on the porch at that time. The Licenser felt the heater and concluded it was too hot to the touch. She believed a child would be burned in 5-6 seconds if the child came in contact with it. The Licenser and the Licensee discussed making the space heater inaccessible or turning down the temperature. On this occasion, the Licenser issued a correction order relating to the space heater.^[7]

9. On February 2, 2006, the Licenser went to the Licensee's home to discuss the communication regarding the second degree burn incident. When she knocked on the door, there was no immediate answer. She knocked several times before a child came to the door and opened it. The Licenser asked for the Licensee, and the Licensee and her boyfriend emerged from the bedroom.^[8] The Licensee had been placing her own infant in a crib in that room in order to free up another bedroom for day care.^[9]

10. On February 2nd, there were 11 children in the Licensee's care. The Licenser again found an electric space heater on in the porch. It was hot to the touch. Also, the room was only 60.2 degrees, and was thus below the minimum required room temperature of 62. The Licenser issued a correction order for the space heater and room temperature violations.^[10]

11. When the Licensee and the Licenser discussed the burn incident, the Licensee told the Licenser that the kerosene space heater had been warming the porch on the morning of January 31st. The children were in the kitchen eating breakfast while the porch was being warmed. The door between the kitchen and porch was closed, and the Licensee believed it was locked.^[11] The Licensee went to the bathroom and was gone for not more than three minutes.^[12] When she returned, she found some of the children, including JM, on the porch where the kerosene space heater was running. JM was crying, because she had burned her hand on the space heater.^[13]

12. The Licensee treated JM's burn with ice and had her hold a cup of ice for a time. The Licensee called U Care and spoke with a nurse about the burn. She was advised that it was a first degree burn, which would not admit of treatment because such a burn is minor. The Licensee applied a salve and tried to reach JM's mother, but was not successful. The Licensee did not leave a

message for JM's mother to call her. It appeared that JM recovered quickly, and the Licensee did not feel it urgent to try again to reach JM's mother.^[14]

13. JM's mother picked JM up around 3:30 on January 31st. She immediately took JM to the doctor, who treated the burn and described it as a "2nd degree burn on the right hand with some minimal blistering."^[15]

14. The Licenser, after discussing the burn incident with the Licensee, included in the February 2, 2006 correction order two violations relating to the burn incident. These included failure to report an incident requiring medical attention and failure to supervise JM on January 31, 2006. The Licenser again discussed with the Licensee options for isolating the space heater from the children.^[16]

15. On February 2, 2006, the Licenser noticed for the first time a chain lock on the door between the kitchen and the porch. The Licensee had never mentioned the lock as an option for isolating the space heater from the children. The Licenser concluded that the lock was new and had been placed there because of the January 31st burn incident.^[17]

16. There was credible evidence that the lock had been on the door by at least the late fall of 2005. The Licensee testified that it had been there since July of 2002 when she moved into the house.^[18] Colby Schwandt, the mother of one the Licensee's charges, testified that she had noticed the lock in the late fall of 2005 around the time the Licensee was doing some remodeling of her home.^[19]

17. On February 7, 2006, the Investigator and the Licenser went to the Licensee's home to discuss the burn incident with the Licensee. The Investigator challenged the Licensee about the incident^[20] and raised her voice to the Licensee. The Licensee felt she was being talked to like a child.^[21]

18. The Investigator believed that the Licensee lied about having a lock on the door all along, since the Licenser had never noticed it until February 2nd. The Investigator asked how the children got on the porch, and the Licensee speculated that JM had pulled a chair over to the door to unlock it, allowing the children to go out to the porch. The Investigator doubted this scenario. The Investigator taped the interview, but did not provide a copy of it to the Licensee in time for the April 3, 2006 hearing. The Investigator testified that she had received the request on March 30th and, since she has 10 days under state law to respond, she had not yet provided a transcript.^[22]

19. The Investigator interviewed JM's mother on February 27, 2006. The mother reported that the Licensee had not called her the day of the burn. JM's mother provided photos of the injury that showed blistering of JM's hand. The photos were taken on February 2nd and 4th.^[23] It appeared on February 27th

that there was scarring from the burn. The Investigator was shocked by the level of injury.^[24]

20. The Investigator concluded that there had been neglect by the Licensee. She concluded that the Licensee had failed to protect a child from injury when she was reasonably able to do so. The Licensee had continued to use the space heater after correction orders and discussion with the Licensor about alternatives to keep the children safe.^[25]

21. Anoka County recommended to the Department that the family child care license of Licensee be temporarily immediately suspended based on its investigation of the burn incident. The Department issued an order on March 3, 2006, more than a month after the incident.

Based on the foregoing Findings of Fact, the Administrative Law Judge reaches the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minnesota Law.

2. The Department provided the Licensee with due, proper and timely notice of the charges and the time and place of the hearing and has fulfilled all procedural requirements of law.

3. Minn. Stat. § 245A.07, subd. 2 provides that the Commissioner shall immediately suspend the license of a provider “if the license holder’s action or failure to comply with applicable law or rule ... poses an imminent risk of harm to the health, safety, or rights of persons served by the program.”

4. At a hearing appealing an Order of Temporary Immediate Suspension, the burden of proof is on the Department to demonstrate that “reasonable cause exists to believe that the license holder’s action or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.”

5. The Administrative Law Judge is directed by statute to determine “whether the immediate suspension should remain in effect pending the Commissioner’s final order ... regarding a licensing sanction.”

6. The Department has demonstrated reasonable cause to believe that there was a violation of the child care licensing rules relating to supervision and reporting of an injury requiring medical attention.

7. The Department has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

8. The Memorandum that follows explains the reasons for these Conclusions and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Order of Temporary Immediate Suspension suspending the family child care license of Amy Harstad be AFFIRMED.

Dated this 10th day of April 2006.

s/Linda F. Close
LINDA F. CLOSE
Administrative Law Judge

Reported: Tape Recorded (five tapes)

MEMORANDUM

In a proceeding to temporarily immediately suspend a child care license, the Department has to show only that *reasonable cause* exists to believe the Licensee failed to comply with the law. Presumably, the Legislature established a low threshold for this determination to assure that children will be safe until there can be a full hearing on whether the child care license should be permanently revoked or otherwise subject to discipline.

A finding of “reasonable cause to believe” in a child care license proceeding has been compared to a finding of “probable cause” in a criminal proceeding.^[26] Probable cause has commonly been defined to mean “a reasonable ground in fact and circumstance for belief in the existence of certain circumstances.”^[27] In both cases the state is entitled to rely on hearsay evidence. The statute specifically allows the Department to demonstrate reasonable cause by submitting “statements, reports, or affidavits.”^[28]

Although this is a close case, it appears there is sufficient evidence that the Department had reasonable cause to believe there is an imminent risk of harm to the health, safety or rights of children in the care of the Licensee so as to require the temporary immediate suspension of her family child care license.

The Licensee presented credible evidence indicating that she is a careful and concerned provider. Her home is neat and clean, and she provides a day care program that includes a variety of healthy activities for the children in her care.^[29] She has been involved in child care her entire life, because her mother was a provider. As a young child, the Licensee was cared for in her mother's child care. As she grew up, the Licensee came to assist her mother in providing child care.^[30] The mothers of three children in the Licensee's care testified at hearing. They are aware of the love and attention the Licensee provides. The mothers had themselves received calls during the day whenever their children were ill.^[31] Their testimony demonstrated great confidence in the Licensee's care.

However, it cannot be denied that the issue of space heaters was brought to the Licensee's attention more than a year before the burn incident. Thus, although the burn incident was an accident, it was an accident waiting to happen.

In conversing with the Licensor about how to protect the children from the space heater, the Licensee correctly rejected the Licensor's suggestion about using a gate. The Licensee knew from her experience that a child could easily knock down or crawl over a gate. But she did not discuss with the Licensor a better solution to the problem—locking the door between the porch and kitchen. Instead, she played along with the Licensor's suggestion, due to her fear of the Licensor. She also wanted to be rid of the Licensor from her home as quickly as possible whenever she visited.^[32]

The Licensee's failure to discuss the lock option had at least two results. First, the Licensee was deprived of any input from the Licensor about the pitfalls of locking the door. One of the pitfalls eventuated when either the Licensee forgot to lock the door, or an older child got on a chair and unlocked it. Second, when a burn incident finally occurred, the Licensor was bound to feel distrust of the Licensee, since it appeared the Licensee had reneged on a promise to put up a gate.

In addition, other facts coalesced to form the basis for the Department's reasonable cause. The Licensee's explanation for how the children got onto the porch seemed far fetched. The Licensee's claim to have called JM's mother could not be substantiated. The Licensee didn't report the incident to the Licensor, and she should have. Finally, upon interview, it appeared the Licensee did not take responsibility for the incident.

For all these reasons, the Administrative Law Judge has concluded that the Department had reasonable cause, and it is appropriate to suspend the license pending further disciplinary proceedings.

L.F.C.

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- [1] Testimony of Jennifer Carlson (Licensor). Ms. Carlson is a licensor for the Anoka County Social Services Child Care Unit. She has worked in that capacity for 6 years.
- [2] Testimony of Licensor.
- [3] Testimony of Megan Carriveau (Investigator).
- [4] Testimony of Licensor; Ex. 7.
- [5] Respondent's Ex. A.
- [6] Testimony of Licensee.
- [7] Testimony of Licensor; Ex. 8.
- [8] Testimony of Licensor.
- [9] Testimony of Licensee.
- [10] Testimony of Licensor; Ex. 10.
- [11] Testimony of Licensor; testimony of Licensee; Ex. 10.
- [12] Testimony of Licensee.
- [13] Testimony of Licensee;
- [14] Testimony of Licensee.
- [15] Ex. 11.
- [16] Testimony of Licensor; Ex. 10.
- [17] Testimony of Licensor.
- [18] Testimony of Licensee.
- [19] Testimony of Colby Schwandt (Schwandt).
- [20] Testimony of Investigator.
- [21] Testimony of Licensee.
- [22] Testimony of Investigator. Just prior to the close of the hearing, counsel for the Department offered to have a transcript prepared for the Licensee. The Licensee's counsel declined the offer, since the purpose of having the transcript would have been for cross examination at hearing.
- [23] Ex. 12
- [24] Testimony of Investigator.
- [25] Testimony of Investigator.
- [26] *State v. Florence*, 239 N.W. 2d 892, 902 (Minn. 1976).
- [27] Merriam Webster Dictionary of Law (1996).
- [28] Minn. Stat. § 245A.08, subd. 3.
- [29] Testimony of Schwandt; testimony of Johnson.
- [30] Testimony of Licensee.
- [31] Testimony of Schwandt; testimony of Johnson.
- [32] Testimony of Licensee.